
(2001) 11 AP CK 0080

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3482 of 2000

Veeramreddy Chandra Rao

APPELLANT

Vs

State by Authorised Officer Land Reforms Tribunal

RESPONDENT

Date of Decision : 26-11-2001

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 21
Hindu Adoptions and Maintenance Act, 1956 — Section 3, 4
Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 123

Citation : (2001) 11 AP CK 0080

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : N [P] Anjana Devi, for the Appellant; GP, for the Respondent

Judgement

P.S. Narayana, J.—The Civil Revision Petition is filed by the revision petitioner u/s 21 of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter referred to as "the Act" in short) aggrieved by the order dated 14.6.2000 made in LRA No.32 of 1992 on the file of the Chairman, Land Reforms Appellate Tribunal-IV Additional District Judge, East Godavari, Kakinada. The facts in brief are as follows:

The primary tribunal came to the conclusion that the revision petitioner-declarant was holding an excess land of 0.7135 S.H. and aggrieved by the order of the primary tribunal, the revision petitioner-declarant filed an appeal which was dismissed and aggrieved by the same Civil Revision Petition No. 3700 of 1994 was filed wherein an order of remand was made. Subsequent to the order of remand, in that appeal, the revision petitioner-declarant filed I.A.No.11 of 2000 u/s 151 CPC read with Rule 16 (1) of the Rules framed under the Act to consider additional ground that the lands situate in Gonthuvanipalem to an extent of A.C. 3.34 cents in S.No.126 and 0.63 cents in S.No.128 are to be treated as dry lands as there is no registered government source of irrigation and S.Nos.131/1,

131/2, 149/5, 150/2 and 152 are not having registered source of irrigation and the land covered by S.No.152 of Thimmapuram also is a registered dry land having no registered source of irrigation.

2. As can be seen from the impugned order, the main contention of the revision petitioner is that certain lands had been given to his two daughters for "Pasupu Kumkuma" and the properties given to the daughters by way of "Pasupu Kumkuma" need not be by a registered document and some evidence had also been placed in this regard. It was, no doubt, the contention of the Government that there are several discrepancies in the evidence let in relating to the aspect of "Pasupu Kumkuma" and also there is no cogent or convincing evidence relating to the same. In fact, the appellate authority had discussed these aspects at paragraphs 4 and 5. Further, an objection was raised that since the remand was with a specific direction, any additional ground cannot be raised at all and the appellate authority had discussed this aspect at paragraph 6 and ultimately had dismissed the appeal confirming the order of the primary tribunal and aggrieved by the same, the unsuccessful declarant before the primary tribunal and the appellate tribunal had preferred the present revision.

3. M/s Anjana Devi Satyanarayana, the learned counsel for the revision petitioner, had strenuously contended that the concept of "Pasupu Kumkuma" under the Hindu Law, in fact, is an ancient concept well recognized by even the old texts of Hindu Law and this concept is very popular and prevalent well recognised as a customary mode of giving some property to the daughters or sisters as the case may be in the Hindu families, especially, agricultural families belonging to the communities like Kamma, Reddy etc. The learned counsel also had strenuously contended that for giving the property to the daughters or sisters in a Hindu joint family, it need not be evidenced by a document at all, and even if it is evidenced by a document, it does not require any registration and in fact even in the declaration it had been mentioned by the declarant relating to the aspect of giving away the property by way of "Pasupu Kumkuma" and these entries coupled with the evidence clearly establish the plea of "Pasupu Kumkuma" which was specifically raised and also well proved in this case, and hence both the tribunals had totally erred on the aspect of appreciating the plea of "Pasupu Kumkuma" raised by the revision petitioner.

4. The learned counsel also had placed reliance on several decisions reported in KAMALA DEVI V. BACHU LAL GUPTA (1.), GURAMMA V. MALLAPPA (2.), AMMATHAYEE PERUMALAKKAL V. KUMARESAN BALAKRISHNAN (3.) and also certain other decisions reported in YARLAGADDA VENKANNA CHOUDARY V. DAGGUBATI LAKSHMINARAYANA (4.), and G. THIMMA REDDY V. THE SPECIAL TAHSILDAR (5.) in this regard. The learned counsel also had pointed out that the classification of the lands also is very material while computing the holding and though the revenue records amply support the stand taken by the declarant, the appellate tribunal had not considered this aspect at all.

5. The learned Government Pleader for Arbitration had straightaway placed

reliance on the decision of the Full Bench reported in GANDEVALLA JAYARAM REDDY V. MOKKALA PADMAVATHAMMA AND OTHERS (6.), and had contended that gift of immovable property by way of "Pasupu Kumkuma" to a daughter at the time of marriage given under a document requires stamp duty and registration since it is a gift within the meaning of Section 123 of the Transfer of Property Act, and no oral gift by way of "Pasupu Kumkuma" is permissible and it must be by a document duly stamped and registered only. The learned counsel also had submitted that the authorities fixed the tharam of the lands as per the rules and this aspect also had been considered.

6. Heard both the counsel and also perused the records available.

7. As far as the additional ground raised by way of an application before the appellate authority is concerned, in BOMMAKORI PAPAIAH V. STATE OF ANDHRA PRADESH (7.), it was held that when the matter was remanded, certain questions affecting the computation of the holdings, which could have been raised were neither raised nor decided by any of the Tribunals, such questions can be raised after remand before the Primary Tribunal and also Appellate Tribunal, and in view of the said decision, the Appellate Tribunal should have considered this aspect also in detail on the material available on record. However, the main contention which had been vehemently argued by both the counsel representing the respective parties is on the aspect of "Pasupu Kumkuma".

8. Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956, dealing with the definition of "maintenance" specifies:

(b) "maintenance" includes-

(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage;

9. Here itself, it is relevant to note Section 4 of the Act dealing with the overriding effect of the Act. Section 4 of the Hindu Adoptions and Maintenance Act, 1956 reads as follows:

4. Overriding effect of Act.-- Save as otherwise expressly provided in this Act,--

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

10. In CHEDALAVADA SUBBAYYA V. ANANDA RAMMAYYA (8.), the Full Bench of the Madras High Court consisting of three judges speaking through his Lordship

Ramesam, J, was pleased to observe:

"The text of Manu quoted at p.294 of Colebrooke's Digest, Vol.2, shows that three-fourths of the whole is taken by the brothers and one-fourth is taken by the sisters, though it is expressed in a round about form "let each give a fourth part of his own distinct share." The text of Katyayana quoted at p.297 is to the same effect: "For unmarried daughters a fourth share is ordained, and three shares for sons....it is settled law that the daughters are not entitled to a share but all the same the discussion shows that the right of the daughter for maintenance up to the going to the husband's house and for marriage expenses is the present remnant of the right to a share."

11. In DEVALAKTUNI SITHAMAHALAKSHMAMMA V. PAMULPATI KOTAYYA (9.), it was held that a gift of a small portion of ancestral property to the daughter by the father is valid.

12. "Pasupu Kumkuma" is a well recognized customary concept recognised by the texts of the ancient Hindu law and also the customary practice has been well recognised in certain communities. This concept of "Pasupu Kumkuma" can be understood as a gift given to a Hindu women either at the time of marriage or even at a later point of time by her parents and the traditional Hindu law, in fact, had recognised the same as "Pasupu Kumkuma" which can be understood as the gift made by way of affection. In fact, in K. RAMALINGAM V. NARAYAN ANNAVI (10.), their Lordships of the Privy Council held that if a reasonable gift is made to a daughter, such a gift is valid. In the judgment cited 1 supra, the deed of gift in favour of daughter and the validity and binding nature of the same on the reversioners had been considered.

13. In the judgment cited 2 supra, the Apex Court had specifically overruled the view expressed in JINNAPPA MAHADEVAPPA V. CHIMMAVA (11.), and the Apex Court held at page 519 as follows:

"The legal position may be summarized thus: The Hindu law texts conferred a right upon a daughter or a sister, as the case may be, to have a share in the family property at the time of partition. That right was lost by efflux of time. But, it became crystallized into a moral obligation. The father or his representative can make a valid gift, by way of reasonable provision for the maintenance of the daughter, regard being had to the financial and other relevant circumstances of the family. By custom or by convenience, such gifts are made at the time of marriage, but the right of the father or his representative to make such a gift is not confined to the marriage occasion. It is a normal (moral ?) obligation and it continues to subsist till it is discharged. Marriage is only a customary occasion for such a gift. But the obligation can be discharged at any time, either during the lifetime of the father or thereafter. It is not possible to lay down a hard and fast rule, prescribing the quantitative limits of such a gift as that would depend on the facts of each case and it can only be decided by Courts, regard being had to the overall picture of the extent of the family estate, the number of daughters to

be provided for and other paramount charges and other similar circumstances. If the father is within his rights to make a gift of a reasonable extent of the family property for the maintenance of a daughter, it cannot be said that the said gift must be made only by one document or only at a single point of time. The validity or the reasonableness of a gift does not depend upon the plurality of documents but on the power of the father to make a gift and the reasonableness of the gift so made. If once the power is granted and the reasonableness of the gift is not disputed, the fact that two gift deeds were executed instead of one, cannot make the gift any the less a valid one.

Applying the aforesaid principles, we have no doubt that in the present case, the gift made by the father was within his right and certainly reasonable. The family had extensive properties. The father gave the daughter only a life-estate in a small extent of land in addition to what had already been given for her maintenance. It has not been stated that the gift made by the father was unreasonable in the circumstances of the case. We, therefore, hold that the said document is valid to the extent of the right conferred on the 8th defendant."

14. In the judgment cited 5 supra, it was held that the lands allotted by way of "Pasupu Kumkuma" to daughters at the time of marriages as per caste traditions and being in their possession, if proved, even though not evidenced through registered document, be deleted from the holding of the father and brother."

15. It is, no doubt, true that the full bench in the judgment cited 6 supra had arrived at a conclusion that the gift of immovable property by way of "Pasupu Kumkuma" to a daughter at the time of marriage given under a document requires stamp duty and registration, since it is a gift within the meaning of Section 123 of the Transfer of Property Act and no oral gift by way of "Pasupu Kumkuma" to daughters can be made and it must be by a document duly stamped and registered. The full bench had overruled the decisions rendered in BHUBANESWAR NAIK SANTOSHRAI V. THE SPECIAL TAHSILDAR (12.) and in P. BUCHI REDDY V. ANANTULA SUDHAKAR (13.). Certain other decisions of other learned single judges, most probably, had not been brought to the notice of the full bench.

16. Be that as it may, the counsel appearing for the revision petitioner, in view of the ratio laid down in the decision cited supra 2, had strenuously contended that in view of Article 141 of the Constitution of India and also the ratio laid down in GOURYA V. THAKUR (14.), GASKET RADIATORS V. E.S.I.C.(15.), ASST. COLLECTOR V. DUNLOP (16.), in STAR CO V. UNION OF INDIA (17.), the decision of the full bench cannot be said to be a binding decision and the learned counsel also had strenuously contended that the decision rendered by the full bench is virtually a blow to the well recognised principles of Hindu law which had not been affected even by the subsequent codified Hindu law or the statutory provisions like Section 17 of the Registration Act and Section 123 of the Transfer of Property Act.

17. The learned Government Pleader for Arbitration had strenuously contended that the full bench decision being a binding decision, this Court is left with no other option except to accept the ratio laid down in the said decision.

18. After hearing both the parties at length and in view of the importance involved in the matter, I am inclined to refer the following questions to be decided by an appropriate division bench.

(a) Whether the decision reported in Gandevala Jayaram Reddy Vs. Mekkala Padmavathamma and others, can be said to be a binding decision in the light of the decisions of the Apex Court reported in Guramma Bhratar Chanbasappa Deshmukh and Another Vs. Malappa, etc., especially in the light of Article 141 of the Constitution of India?

(b) Whether the customary mode of giving property by way of "Pasupu Kumkuma" is not saved under the Hindu law in view of Section 3(b) read with Section 4 of the Hindu Adoptions and Maintenance Act, 1956.

(c) Whether the rejection of additional ground raised by the declarant in the appeal after remand can be sustained in the facts and circumstances of the case?

19. I am of the considered opinion that in the light of the facts and circumstances of the case, if the above questions are dealt with, nothing more survives to be decided in the Civil Revision Petition, and hence I am inclined to refer the Civil Revision Petition in toto to be decided by an appropriate Division Bench in view of the important questions involved in the matter. Office is directed to place the papers before the Hon"ble the Chief Justice for getting appropriate orders in this regard.